



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,614	05/31/2001	Yuko Tamaki	35.G2820	7059

5514 7590 06/05/2006

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

ASTORINO, MICHAEL C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/867,614	Applicant(s) TAMAKI ET AL.	
	Examiner Michael C. Astorino	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 22, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 145, 146, 149 to 151, 153 to 155, 158 to 160, 162, 163, 166 to 168 and 172 to 187 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 145, 146, 149 to 151, 153 to 155, 158 to 160, 162, 163, 166 to 168 and 172 to 187 .

DETAILED ACTION

The examiner acknowledges the amendment filed March 22, 2006.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 145, 153-154, 162-163, 172-175, and 182-184 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 145, 153-154, 162-163, 172-175, the terms "format" and "outside device" are too generic to understand how they are being used with the claims. This is so primarily because the applicant has not used these terms in the specification. The applicant should avoid adding any new matter in remedying the indefiniteness of the claims. Additionally the dependent claims to those rejected claims are rejected as being dependent on rejected claims.

The terms "large" and "small" in claims 182, 183, and 184 are relative terms that render the claim indefinite. The terms "large" and "small" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3736

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 145, 146, 150 to 151, 153 to 155, 159 to 160, 162, 163, 166 to 167, 173, 175 to 181, and 185-187 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. US Patent Number 6,302,844 B1.

In regards to claims 153, 154, and 174-175, specifically the added limitation of “wherein a format of said body temperature data differs depending on said outside device” is taught by Walker et al. Walker et al. discloses the output device being a pager, PDA or Cellular phone and each output device will have a different format. The applicant should also look to the previous office action for other details of the rejection.

In regards to method claims 145 and 172-173, Walker et al., “wherein a format of said body temperature data differs depending on said outside device” does not add a method step/limitation. The applicant should also look to the previous office action for other details of the rejection. Nonetheless, Walker et al. discloses the output device being a pager, PDA or Cellular phone and each output device will have a different format.

In regards to claims 162 and 163, it is unclear how the “wherein a format of said body temperature data differs depending on said outside device” clause affects a computer readable storage medium. It is the examiner’s belief that there is no effect to the storage medium. The applicant should also look to the previous office action for other details of the rejection. Nonetheless, Walker et al. discloses the output device being a pager, PDA or Cellular phone and each output device will have a different format.

In regards to the limitation of a presenting step a hospital as opposed to a facility, Walker et al. teaches this limitation as well. It is the examiner position that a facility is synonymous with a hospital (step 916, col. 15, lines 44-67, and col. 16, lines 23; 916 represents a list of doctors, each doctor is representative of a facility, otherwise stated a doctor's office. A hospital is an institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured, which can be considered a doctor's office.)

In regards to claims 185-187, are rejected on the same basis as the above claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 149, 158, and 167 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. US Patent Number 6,302,844 B1 as applied to claims 147, 154 and 163 above, and further in view of Dutta US 2002/0077953.

Walker et al. teaches counting step/means via the transmission of data to the physician who accepts the case, but does not teach a cash-back step. Getting cash back when a service is not sufficiently provided is a tenet of sales since humans have exchanged money for services. The most common vehicle for a business is a return of cash or credit to the original purchaser. This practice is well known in the business community and would follow in the e-commerce world of today. Dutta, a reference related to reimbursement procedures in e-commerce, teaches

Art Unit: 3736

a cash back step/means when a reservation/service is not fulfilled. (see paragraph [0066]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added the step/means of giving those cash-back for services not adequately performed as taught in Dutta in view of the system and method of patient care delivery of Walker et al. so as to properly refund money in an e-commerce system and/or business method.

Claims 172, and 174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. US Patent Number 6,302,844 B1 in view of Dutta US 2002/0077953.

In regards to claims 172 and 174, all of the limitations excluding the counting step/means and the cash-back step/means are rejected on the same basis as claim 145. As to the counting step/means and the cash-back step/means Walker et al. teaches counting step/means via the transmission of data to the physician who accepts the case, but does not teach a cash-back step. Getting cash back when a service is not sufficiently provided is a tenet of sales since humans have exchanged money for services. The most common vehicle for a business is a return of cash or credit to the original purchaser. This practice is well known in the business community and would follow in the e-commerce world of today. Dutta, a reference related to reimbursement procedures in e-commerce, teaches a cash back step/means when a reservation/service is not fulfilled. (see paragraph [0066]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added the step/means of giving those cash-back for services not adequately performed as taught in Dutta in view of the system and method of patient care delivery of Walker et al. so as to properly refund money in an e-commerce system and/or business method.

Claims 182, 183, and 184 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. US Patent Number 6,302,844 B1 in view of Mault US Patent Number 6478736 B1.

Walker et al. discloses presenting medical data to a user via a physician terminal device 110-N, for example pager, PDA or cellular phone. However, does not disclose the data is a graph and text data is submitted to a PDA. Mault a reference in an analogous art discloses a PDA with graphs and text. Regardless of the relative size of the device, since a PDA display is shown to display text and graphics (figures 7-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the output of Walker et al. in view of text and graphics in the display of Mault, since Mault explicitly states is allows options to the user in terms of the display which is implicitly more user-friendly. (column 8, lines 25-49)

Response to Arguments

Applicant's arguments filed March 22, 2006 have been fully considered but they are not persuasive. The applicant has only made one argument. The applicant argues that Walker et al. does not disclose that the format of the data differs depending on the physician terminal device. However, Walker et al. discloses the use an output device being a pager, PDA or cellular phone and each output device will have a different format. Additionally, it is unclear what is truly meant by format and outside device as the specification does not use this language. As the examiner presently understands the amendment and the specification no new matter has been added by the amendment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael C Astorino** whose telephone number is **571-272-4723**. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

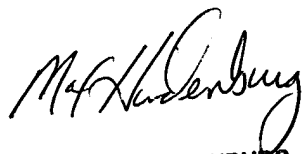
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 3736

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
May 30, 2006


MAX F. HINDENBURG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700